

SENATE RECORD VOTE ANALYSIS

105th Congress
2nd Session

Vote No. 230

July 23, 1998, 12:30 p.m.
Page S-8837 Temp. Record

COMMERCE-JUSTICE-STATE/Court-Appointed Lawyer Fees in Capital Cases

SUBJECT: Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill for fiscal year 1999 . . . S. 2260. Nickles amendment No. 3272.

ACTION: AMENDMENT AGREED TO, 53-47

SYNOPSIS: As reported, S. 2260, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill for fiscal year 1999, will provide a total of \$33.239 billion in new budget authority, which is \$1.115 billion more than appropriated for fiscal year (FY) 1998 and is \$3.647 billion less than requested. The bill contains large spending increases for various law enforcement activities.

The Nickles amendment would prohibit paying court-appointed defense attorneys in Federal capital cases more than the Federal prosecuting attorneys in such cases. The amendment would limit only the compensation for the defense attorneys; no limit would be put on the amount paid to them for their expenses. Further, no limit would be placed on the number of defense attorneys assigned to a capital case. Specifically, the compensation in a month paid to a court-appointed defense attorney in a capital case could not exceed the compensation paid in that month to the United States Attorney for the district in which the action was prosecuted.

Those favoring the amendment contended:

Most capital cases are prosecuted in State courts. In most States, the amount paid to court-appointed attorneys is capped. In Federal courts, for non-capital cases, the amount that may be paid to court-appointed attorneys is often capped. In Federal capital cases, though, no caps exist, and the fees that are being charged are outrageously high. Typically, lawyers in such cases are paid three to five times as much as the prosecuting attorneys. We think that paying that much is an abuse of the taxpayer's money. The average annual pay for a United States attorney is \$100,000 per year. That rate of pay is more than adequate for defense attorneys as well as for prosecuting attorneys. We further note that having this huge disparity between the amount that the Federal Government pays

(See other side)

YEAS (53)			NAYS (47)			NOT VOTING (0)	
Republicans (45 or 82%)		Democrats (8 or 18%)	Republicans (10 or 18%)	Democrats (37 or 82%)		Republicans (0)	Democrats (0)
Abraham	Inhofe	Boxer	Brownback	Akaka	Kerry		
Allard	Jeffords	Breaux	Coats	Baucus	Kohl		
Ashcroft	Kempthorne	Byrd	Collins	Biden	Landrieu		
Bennett	Kyl	Conrad	D'Amato	Bingaman	Lautenberg		
Bond	Lott	Dorgan	DeWine	Bryan	Leahy		
Burns	Lugar	Hollings	Gorton	Bumpers	Levin		
Campbell	McCain	Inouye	Hatch	Cleland	Lieberman		
Chafee	McConnell	Wyden	Mack	Daschle	Mikulski		
Cochran	Murkowski		Specter	Dodd	Moseley-Braun		
Coverdell	Nickles		Thompson	Durbin	Moynihan		
Craig	Roberts			Feingold	Murray		
Domenici	Roth			Feinstein	Reed		
Enzi	Santorum			Ford	Reid		
Faircloth	Sessions			Glenn	Robb		
Frist	Shelby			Graham	Rockefeller		
Gramm	Smith, Bob			Harkin	Sarbanes		
Grams	Smith, Gordon			Johnson	Torricelli		
Grassley	Snowe			Kennedy	Wellstone		
Gregg	Stevens			Kerrey			
Hagel	Thomas						
Helms	Thurmond						
Hutchinson	Warner						
Hutchison							

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

lawyers to prosecute people for capital offenses and the amount that it pays them to defend people for those offenses gives lawyers a huge incentive to want to be on defense teams. The only equitable course is to limit the defense attorneys to being paid no more than prosecuting attorneys. The Nickles amendment would establish that limit. The limit would apply only to defense attorneys' compensation; they would still be able to receive unlimited sums from the taxpayers to cover their expenses. Anyone charged with a capital crime is entitled to a fair defense, but that does not mean that the lawyer (or lawyers) hired to represent him or her is entitled to become independently wealthy, at the taxpayers' expense, providing that defense. If Senators agree with that common-sense principle they should vote in favor of this amendment.

Those opposing the amendment contended:

We do not think that it is fair to compare the amount paid to prosecutors with the amount paid to court-appointed public defenders, because prosecutors do not have the same expenses. Unlike court-appointed public defenders, they do not have to pay the salaries of their office help, or rent, or any of the other costs associated with a private law practice. When we were in private law practice we were often appointed by the court to serve as defense counsel, and we usually found that the amount paid came to less than we made on other cases. Therefore, the amounts paid to court-appointed defense attorneys are not exorbitant, so this amendment to limit their fees should be rejected.